

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend proposed Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code. (See **ARC 7696B** herein.)

Pursuant to Iowa Code section 89A.3, the Labor Commissioner may adopt rules concerning the denial, issuance, revocation and suspension of special inspector commissions. The amendment proposes a new rule governing the issuance, denial, probation, revocation, and suspension of special inspector commissions. The proposed new rule is more current and provides more detail than the existing rule.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 89A and to protect the public safety and health.

Written data, views, or arguments to be considered in adoption shall be submitted no later than April 29, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

A public hearing will be held on April 29, 2009, at 1:30 p.m. in the Capitol View Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

This amendment is intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

The following amendment is proposed.

Adopt the following **new** rule 875—71.12(89A,252J,261,272D):

875—71.12(89A,252J,261,272D) Special inspector commissions.

71.12(1) Definition. As used in this rule, "certificate of noncompliance" means:

- a. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
- b. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
- c. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

71.12(2) Qualifications.

- a. Each applicant must possess a high school diploma or general equivalency degree.
- b. Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.
- c. Each applicant shall be a CEI.
- d. Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.
- e. Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than \$1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than \$5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than \$100,000 for damage to or destruction of property in any

one accident. The insurance coverage of the special inspector's employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

71.12(3) Application. An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

71.12(4) Expiration. The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

71.12(5) Changes. The special inspector shall notify the division at the time any of the information on the form or attachments changes.

71.12(6) Denials. The labor commissioner may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

71.12(7) Investigations. The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

71.12(8) Reasons for probation. The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

71.12(9) Reasons for suspension. The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

- a. The special inspector failed to submit and report inspections on a timely basis;
- b. The special inspector abused the special inspector's authority;
- c. The special inspector misrepresented self as a state inspector or a state employee;
- d. The special inspector used commission authority for inappropriate personal gain;
- e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f. The special inspector committed numerous violations as described in subrule 71.12(8);
- g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- h. The special inspector is no longer a CEI;
- i. The division received a certificate of noncompliance; or
- j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 71.12(9) "a" to "h."

71.12(10) Reasons for revocation. The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

- a. The special inspector filed a misleading, false or fraudulent report;
- b. The special inspector failed to perform a required inspection;
- c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d. The special inspector committed repeated violations as described in subrule 71.12(9);
- e. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- f. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10) "a" to "e";
- g. The special inspector is no longer a CEI; or
- h. The division received a certificate of noncompliance.

71.12(11) Procedures. The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

- a. Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.
- b. Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.
- c. Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.
- d. Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.
- e. Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.
- f. Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.
- g. Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.
- h. Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.
- i. Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.